

**IN THE DRAWINGS:**

Applicant submits substitute drawings for Figures 1, 2, 3, 4, 5 and 9 for approval.

**REMARKS**

Claims 1-3, 6-8, and 10-12 remain in the application. Applicant requests continued examination. A request for continued examination and a petition for a one-month extension of time is submitted herewith.

The drawings were objected to on specific grounds, as noted in the Office Action. Applicant submits herewith replacement drawings in compliance with 37 CFR §1.121(d), correcting items noted in the Office Action. Besides the replacement drawings, marked up sheets showing the changes made in red are also submitted as a convenience to the Examiner. Applicant respectfully requests that the objection to the drawings be withdrawn.

The disclosure was objected to because of certain informalities regarding improper number designators. Applicant has amended the appropriate paragraphs of the specification to correct these informalities. Applicant respectfully requests that the objection to the disclosure be withdrawn.

The specification was objected to for failure to provide proper antecedent basis for the claimed subject matter. The Office Action specifically pointed out that the wording “attached to the bottom” in claim 1 was not found in the specification and the wording “permanently fastened” in claim 10 was not found in the specification.

Paragraph [0027] of the specification has been amended to specifically utilize the words “attached to the bottom” in describing the location of the light source 43.

Paragraph [0019] has been specifically amended to recite the words “permanently fastened” when describing how the water inlet (29) fits into the plenum chamber (23).

Applicant respectfully requests that the objection to the specification be withdrawn.

The Office Action objected to the amendment filed on July 5, 2006 on the grounds that it introduced new matter into the disclosure. Specifically, the Office Action pointed out that the term “glued” was added by the amendment. Applicant has cancelled the word “glued” from the specification.

Applicant respectfully requests that this objection be withdrawn.

Claim 1 and all claims dependent from claim 1 were rejected under 35 U.S.C. §112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Specifically, the Office Action holds that claim 1 is not clear about whether the container recited in the preamble is intended to be part of the claim combination. Applicant has amended claim 1 to a Jepson format which clearly sets forth that the container is part of the combination being claimed. Applicant respectfully requests that this rejection be withdrawn.

Claims 1-4 and 9-12 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Ruthenberg* (5,249,744) and *Koren et al.* (6,375,342). Applicant respectfully traverses.

The Office action correctly notes that *Ruthenberg* does not disclose or teach the provision of a light source. Moreover, the *Ruthenberg* apparatus is for creating waterfalls for swimming pools which have much larger bodies of water than a spa container and which utilize concrete walls and rims, instead of plastic.

The Office Action refers to Figure 5 of *Ruthenberg*. Applicant respectfully submits that Figure 5 does not show “a spout (13) formed from the walls (24, 26) of the plenum chamber as a continuation of the water outlet (30), the spout (13) being mounted in the top rim (15) of the container (20), the spout (13) having a narrow elongated mouth (14) and a top (17) and a bottom (16).”

The Office Action then points to *Koren et al.* (*Koren '342*) for disclosure of a light source stating that the combination of *Koren '342* and *Ruthenberg* would render obvious the claimed invention. Applicant respectfully traverses.

*Koren '342* has a light source which is a fiber-optic cable bundle (12) encased within a conduit (38) which is attached to a side portion of the water conduit (16) and along an underside of outlet edge (22). A plurality of holes (40) are formed along the underside of the fiber conduit (38) and the output ends (42) of the respective individual fibers (14) are disposed in or through the holes (40) to "direct light downward onto surfaces (44) located under the waterfall (32)." (Column 2, lines 41-45) Applicant respectfully refers the Examiner to Figure 2 of *Koren '342* which shows the light coming through holes (40) and being directed onto the concrete sidewall (44) and pool water (26). The *Koren '342* light is not injected into the waterfall stream (32).

U.S. patent number 6,484,952 granted to Koren on November 26, 2002 (*Koren '952*), which recently came to applicant's attention, in contrast, does show the fibers (14) of the *Koren* fiber conduit (38) injecting light into the waterfall stream (32). The ends of the light fibers (14) are directed through holes (40) in the top (16) of the waterfall apparatus (10) (Figure 3) or the bottom (56) (Figure 2).

*Koren '952* chooses to inject light into the waterfall by penetrating the top or bottom of his flow channel with holes (40) for the light fibers (14). The present invention, in contrast, injects light into "the water flowing out of the spout," after the water has left the spout. By injecting light into the waterfall at this point, the invention avoids the leakage problems inherent with the *Koren '952* approach, i.e., holes in the top and bottom of the flow channel.

Neither *Koren '342* or *Koren '952* show, teach or contemplate “a light source (43) attached to the bottom (16) of the spout (13) at the mouth (14) so as to inject light directly into the water flowing out of the spout (13) after it has left the spout (13).”

Even if the combination of *Ruthenberg* and *Koren '342* were proper, the combination would not provide the invention as set forth in claims 1-4 and 9-12.

Applicant respectfully requests that this rejection be withdrawn.

Claims 6-8 were rejected under 35 U.S.C. §103(a) as unpatentable over *Ruthenberg* and *Koren '342* and further in view of *Simpson et al* (6,450,418). Applicant respectfully traverses.

The Office Action points to *Simpson et al.* Figures 7-9 as a teaching for a spout (88) having a bezel (90).

Applicant respectfully traverses. The bezel (90) of *Simpson et al.* is not in fact a bezel. It is described in *Simpson et al.* as “outlet cap 90.” Furthermore, “the cap slides into the slot (88) and gasket (92) that is seated between the cap’s lip (94) and the slot’s perimeter (96).” (Column 5, lines 47-49) Clearly, *Simpson et al.* does not show or teach “a bezel (21) shaped to fit over the spout and light source after it is mounted.”

Applicant respectfully requests that this rejection be withdrawn.

Claims 10 and 11 were rejected under 35 U.S.C. §103(a) as being unpatentable over *Ruthenberg* and *Koren '342* and further in view of *Koren* (6,367,100) (*Koren '100*). Applicant respectfully traverses.

The Office Action points to *Koren '100* for a disclosure of “an inlet (14) having a separate inlet structure (25).” The Office Action states “it is not understood how applicant’s broad claims could distinguish this structure.”

Claim 10 sets forth applicant's invention as "the water inlet (29) is a separate structure from the plenum chamber (23) that fits into and is permanently fastened to the walls (24, 26) of the plenum chamber (23)." This claimed element can best be seen in Figure 2 of the application, which shows applicant's water inlet structure (29) as being more than just an inlet pipe such as *Koren '342's* inlet (14). It is a structure that includes an inlet pipe (37) plus a box and walls (35, 33) and a baffle (27), all of which fit into and are permanently fastened to the walls (24, 26) of the plenum chamber (23).

*Koren '100* on the other hand, simply shows a base (25) which is nothing more than the bottom half of *Koren's* plenum chamber. His base (25) does not fit into or fasten to walls of a plenum chamber. It simply attaches to the upper lip (31) and lower lip (36) of the *Koren '100* waterfall apparatus (20) to form a plenum chamber.

Applicant respectfully requests that this rejection be withdrawn.

In light of the above amendment and remarks, Applicant believes that all the claims remaining in the application are in condition for allowance and respectfully requests that the claims be allowed and this application passed to issue.

I hereby certify that this correspondence is being deposited with the United States Postal Service as "Express Mail Post Office to Addressee" service under 37 CFR 1.10 in an envelope addressed to Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on December 8, 2006.

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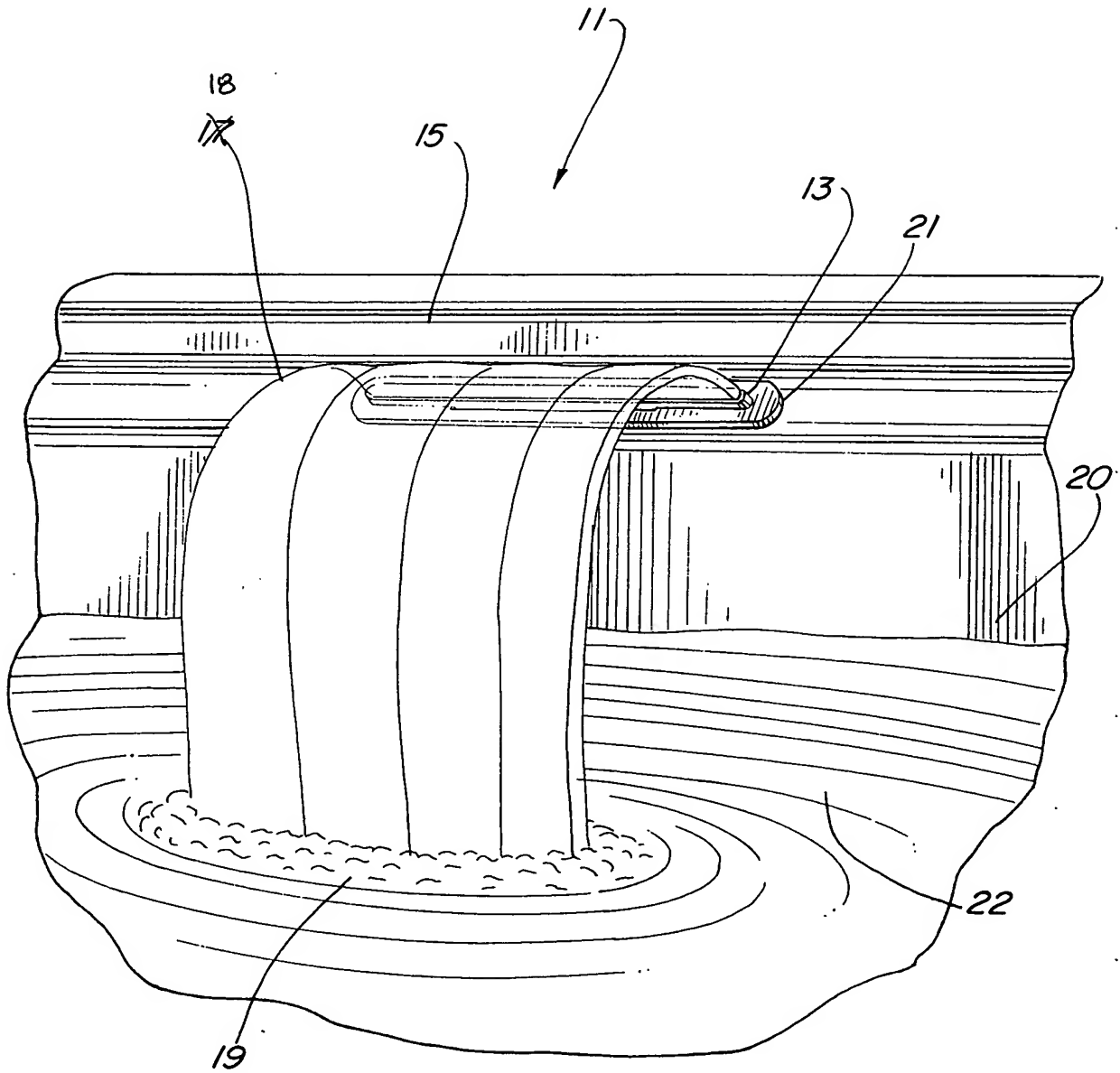
Dated: December 8, 2006

Very truly yours,

**SNELL & WILMER L.L.P.**

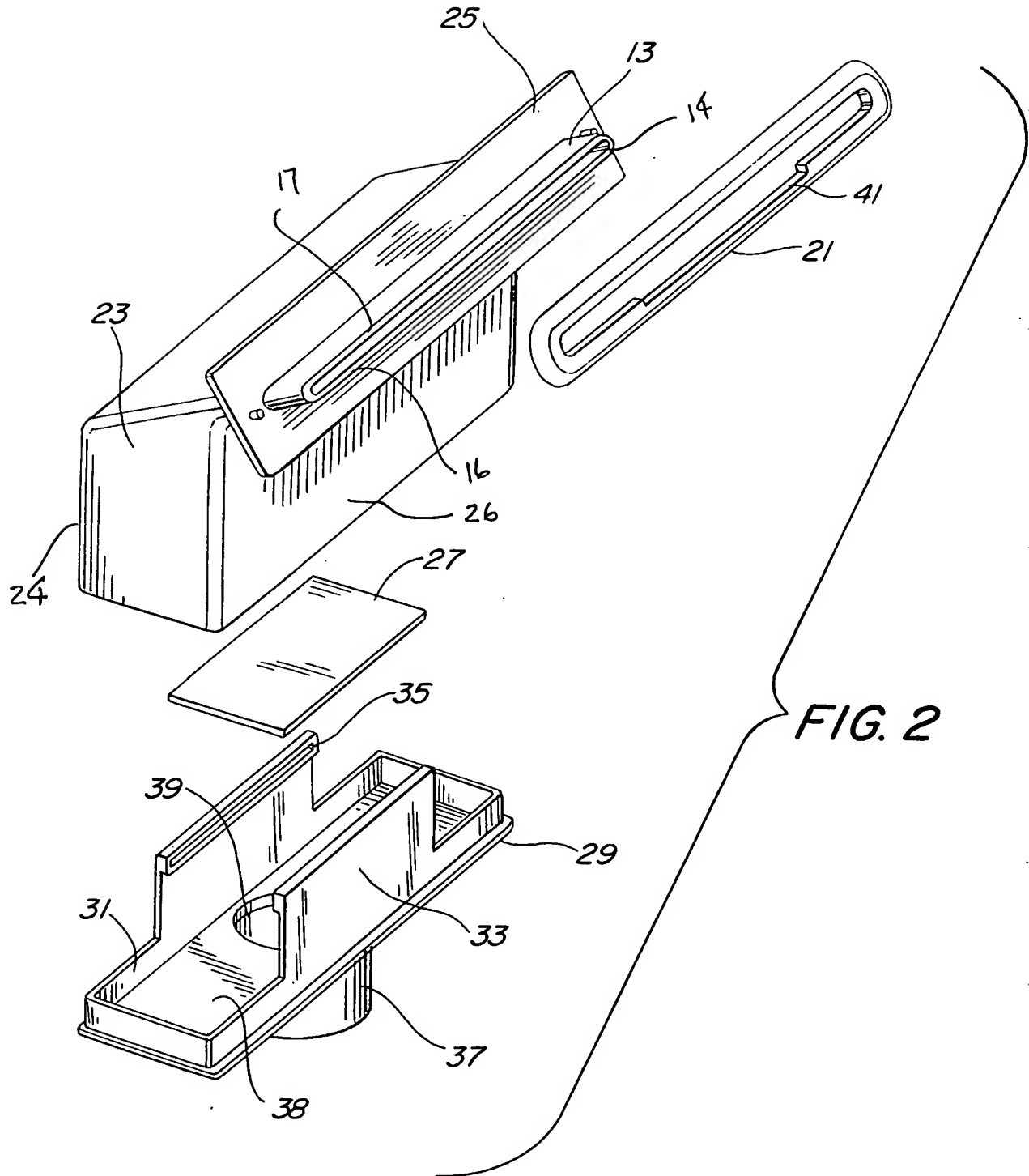


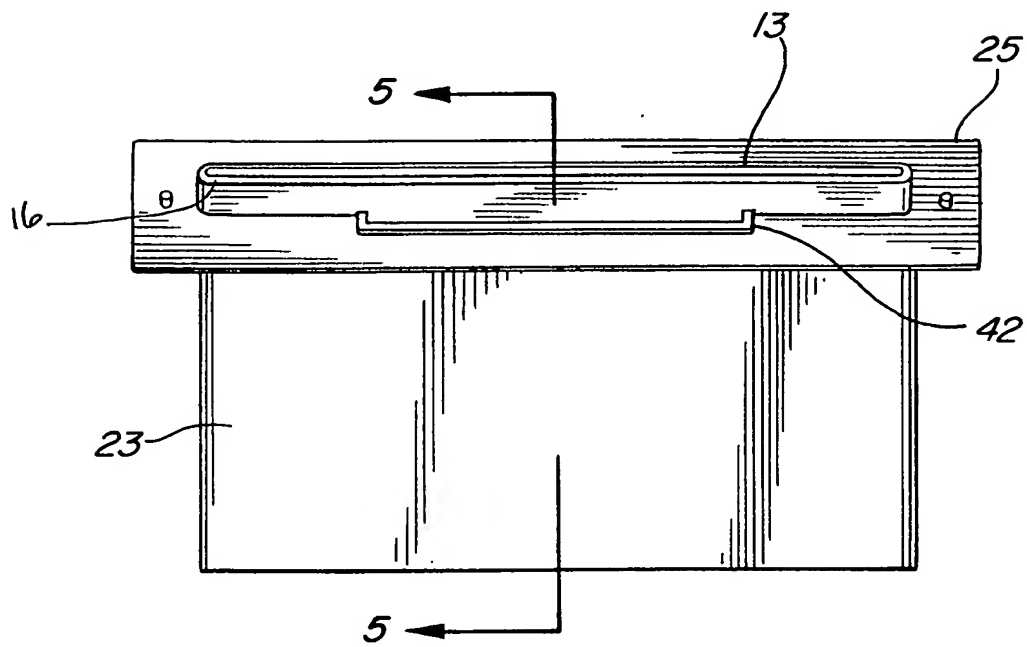
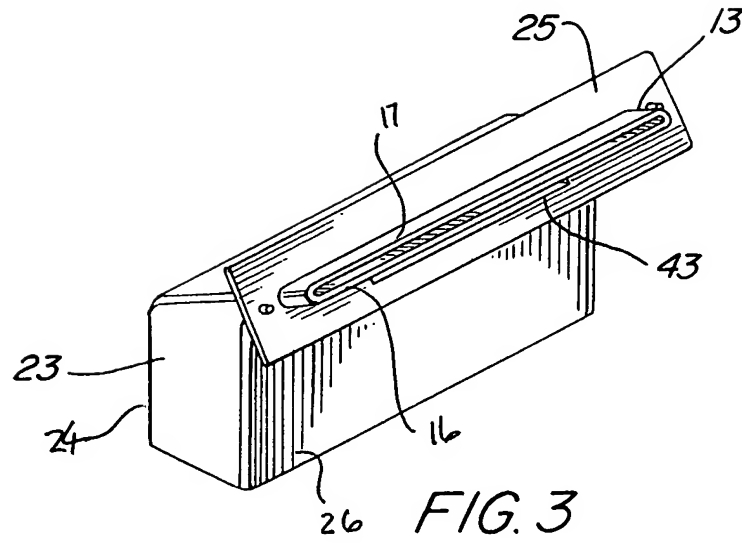
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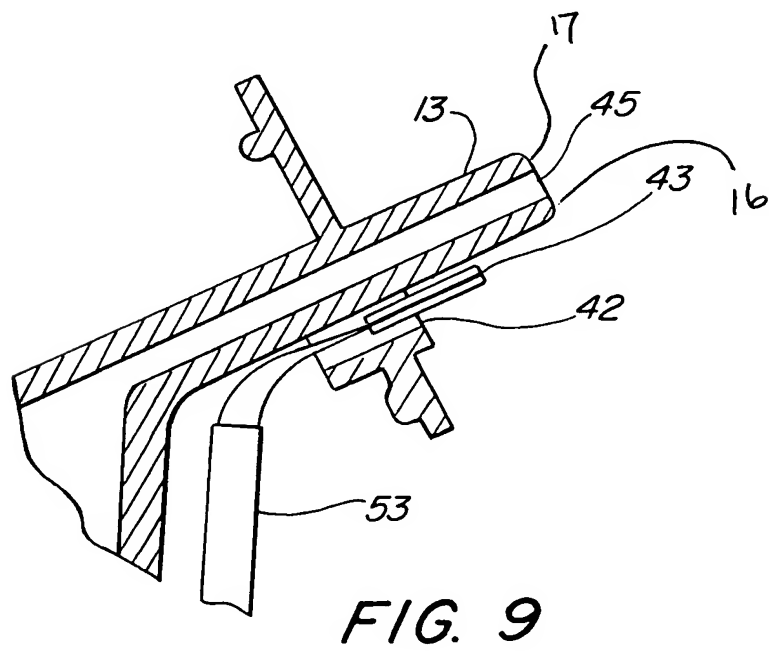
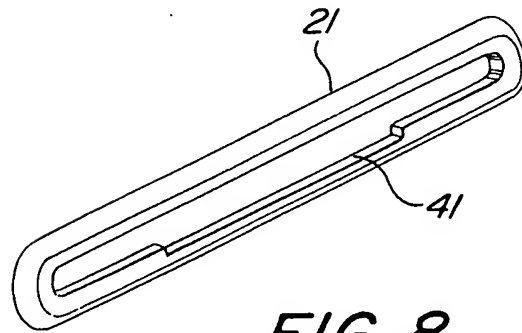
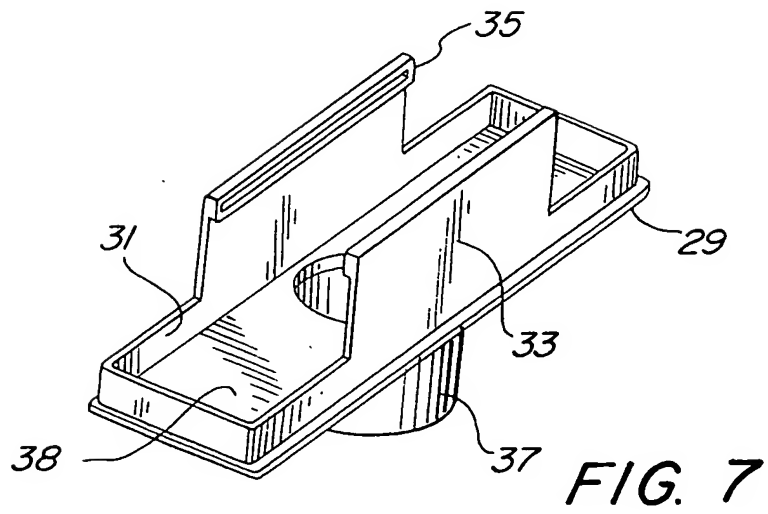


**FIG. 1**









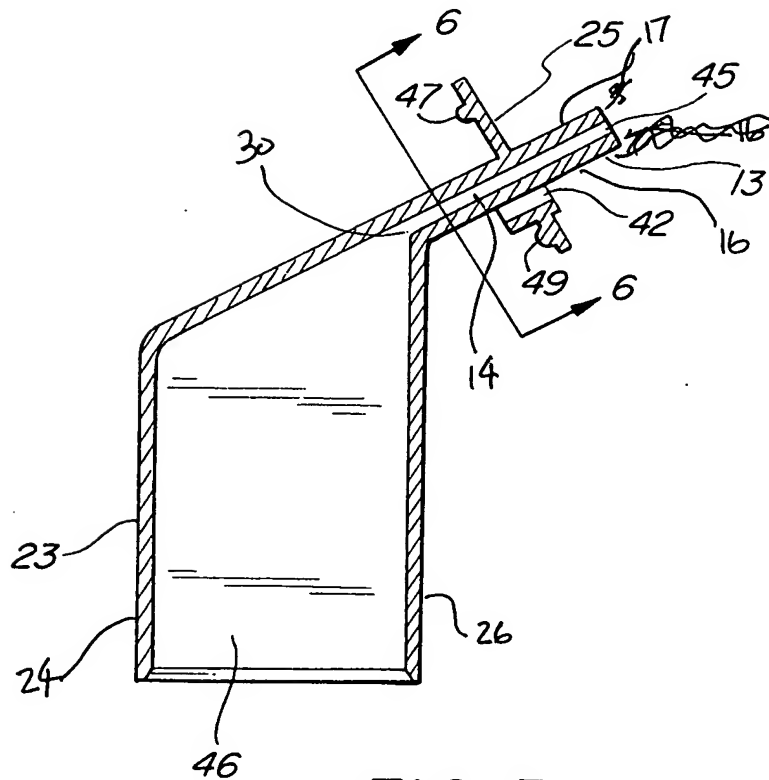


FIG. 5

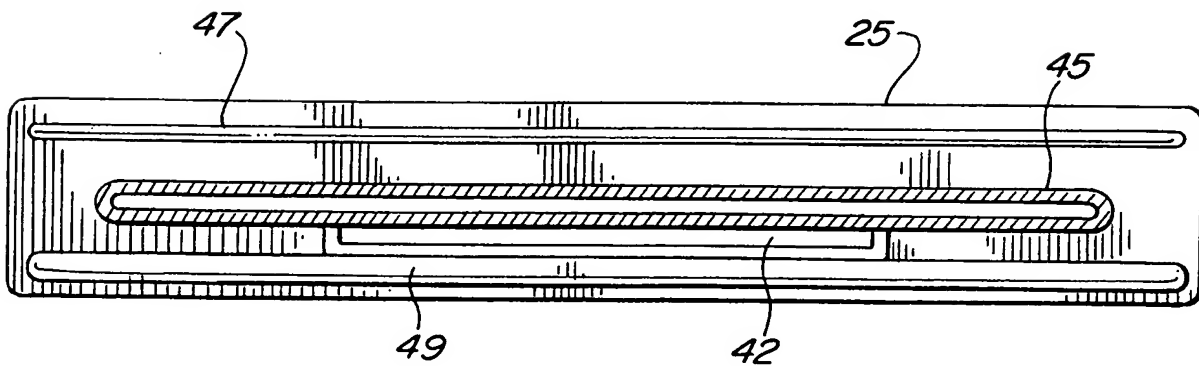


FIG. 6